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AN ACT
RELATING TO CRIMINAL PROCEDURE; AMENDING PROCEDURES FOR
POST-CONVICTION CONSIDERATION OF DNA EVIDENCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 31-1A-2 NMSA 1978 (being Laws 2003,
Chapter 27, Section 1) is amended to read:

"31-1A-2. PROCEDURES FOR POST-CONVICTION CONSIDERATION
OF DNA EVIDENCE--REQUIREMENTS.--

A. A person convicted of a felony, who claims that
DNA evidence will establish the person's innocence, may
petition the district court of the judicial district in which
the person was convicted to order the disclosure,
preservation, production and testing of evidence that can be
subjected to DNA testing. A copy of the petition shall be
served on the district attorney for the judicial district in
which the district court is located. A petitioner shall be
granted full, fair and prompt proceedings upon filing the
petition.

B. As a condition to the district court's
acceptance of the person's petition, the petitioner shall:

(1) submit to DNA testing ordered by the
district court; and

(2) authorize the district attorney's use of
the DNA test results to investigate all aspects of the case

1 that the petitioner is seeking to reopen.

2 C. Samples submitted pursuant to Subsection B of
3 this section shall be submitted according to the procedures
4 in the DNA Identification Act and shall be entered into
5 CODIS, as defined in that act.

6 D. The petitioner shall show, by a preponderance
7 of the evidence, that:

8 (1) the petitioner was convicted of a
9 felony;

10 (2) evidence exists that can be subjected to
11 DNA testing;

12 (3) the evidence to be subjected to DNA
13 testing:

14 (a) has not previously been subjected
15 to DNA testing;

16 (b) has not previously been subjected
17 to the type of DNA testing that is now being requested; or

18 (c) was previously subjected to DNA
19 testing, but was tested incorrectly or interpreted
20 incorrectly;

21 (4) the DNA testing the petitioner is
22 requesting will be likely to produce admissible evidence; and

23 (5) identity was an issue in the
24 petitioner's case or that if the DNA testing the petitioner
25 is requesting had been performed prior to the petitioner's

1 conviction and the results had been exculpatory, there is a
2 reasonable probability that the petitioner would not have
3 pled guilty or been found guilty.

4 E. If the petitioner satisfies the requirements
5 set forth in Subsection D of this section, the district court
6 shall appoint counsel for the petitioner, unless the
7 petitioner waives counsel or retains the petitioner's own
8 counsel.

9 F. After reviewing a petition, the district court
10 may dismiss the petition, order a response by the district
11 attorney or issue an order for DNA testing.

12 G. The district court shall order all evidence
13 secured that is related to the petitioner's case and that
14 could be subjected to DNA testing. The evidence shall be
15 preserved during the pendency of the proceeding. The
16 district court may impose appropriate sanctions, including
17 dismissal of the petitioner's conviction or criminal
18 contempt, if the court determines that evidence was
19 intentionally destroyed after issuance of the court's order
20 to secure evidence.

21 H. The district court shall order DNA testing if
22 the petitioner satisfies the requirements set forth in
23 Subsections B and D of this section.

24 I. If the results of the DNA testing are
25 exculpatory, the district court may set aside the

1 petitioner's judgment and sentence, may dismiss the charges
2 against the petitioner with prejudice, may grant the
3 petitioner a new trial or may order other appropriate relief.

4 J. The cost of DNA testing ordered pursuant to
5 this section shall be borne by the state or the petitioner,
6 as the district court may order in the interest of justice.
7 Provided, that a petitioner shall not be denied DNA testing
8 because of the petitioner's inability to pay for the cost of
9 DNA testing. Testing under this provision shall only be
10 performed by a laboratory that meets the minimum standards of
11 the national DNA index system.

12 K. The provisions of this section shall not be
13 interpreted to limit:

14 (1) other circumstances under which a person
15 may obtain DNA testing; or

16 (2) post-conviction relief a petitioner may
17 seek pursuant to other provisions of law.

18 L. The petitioner shall have the right to appeal a
19 district court's denial of the requested DNA testing, a
20 district court's final order on a petition or a district
21 court's decision regarding relief for the petitioner. The
22 state shall have the right to appeal any final order issued
23 by the district court. An appeal shall be filed by a party
24 within thirty days to the court of appeals.

25 M. The state shall preserve all evidence that is

1 secured in relation to an investigation or prosecution of a
2 crime, and that could be subjected to DNA testing, for not
3 less than the period of time that a person remains subject to
4 incarceration or on probation or parole in connection with
5 the investigation or prosecution.

6 N. The state may dispose of evidence before the
7 expiration of the time period set forth in Subsection M of
8 this section if:

9 (1) no other law, regulation or court order
10 requires that the evidence be preserved;

11 (2) the evidence must be returned to its
12 rightful owner;

13 (3) preservation of the evidence is
14 impractical due to the size, bulk or physical characteristics
15 of the evidence; and

16 (4) the state takes reasonable measures to
17 remove and preserve portions of the evidence sufficient to
18 permit future DNA testing.

19 O. In proceedings under this section, the Rules of
20 Evidence and the Rules of Civil Procedure for the District
21 Courts shall apply.

22 P. As used in this section, "DNA" means
23 deoxyribonucleic acid."

24 SECTION 2. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2013. _____